

**CONCURRING STATEMENT OF
COMMISSIONER AJIT PAI**

Re: *SureWest Telephone Petition for a Waiver of Section 54.314(d) Filing Deadlines for Submission of State Certification of Federal High-Cost Support, Petitions for Waiver of Universal Service High-Cost Filing Deadlines*, WC Docket No.08-71.

I agree with my colleagues that SureWest violated our rules and, under court precedent, is not entitled to a waiver.¹ Specifically, our rules required SureWest to file its high-cost certification with the California Public Utilities Commission, not the FCC and the Universal Service Administrative Company (USAC).² It failed to do so. And a simple mistake is usually insufficient to justify a waiver.³

I can only concur in the result the FCC reaches today, however, because withholding \$2,925,576 in interstate common line support from SureWest for this minor filing error—as we are required to do under our rules⁴—is exceedingly harsh.

For one, SureWest’s misfiling caused no possible harm to the Universal Service Fund: Not only did the agencies charged with protecting the Fund (the FCC and USAC) have SureWest’s filing, but they also relied on the very certification at issue to dole out frozen support during the last quarter of 2012.⁵

For another, the penalty for misfiling here is wildly out of sync with penalties we normally assess where there is plausible harm. Our *Forfeiture Policy Statement*, for example, sets the baseline penalty for failing to file a required form at only \$3,000.⁶ Our precedent imposes just a \$20,000 penalty for inaccurate Universal Service Fund forms.⁷ And the Act limits the maximum forfeiture we can impose for a single violation to \$160,000, or \$1,575,000 if a single act counts as a continuing violation.⁸ The fact that SureWest’s penalty is almost twice the maximum we could impose for a single act (not to mention

¹ *Order* at paras. 8–10.

² 47 C.F.R. § 54.314(a), (c)(1); *compare* Letter from Scott K. Barber, Vice President and Chief Operating Officer, SureWest Telephone, to the Office of the Secretary, FCC, and Karen Majcher, Vice President – High Cost and Low Income Division, Universal Service Administrative Company, CC Docket No. 96-45 (June 21, 2012) (SureWest’s initial filing), *with* Letter from Scott Kitchen, Senior Manager, Regulatory Compliance, SureWest Telephone, to Director, Communications Division, California Public Utilities Commission (Jan. 24, 2013) (SureWest’s refiling).

³ *Cf. NetworkIP, LLC v. FCC*, 548 F.3d 116, 127 (D.C. Cir. 2008) (vacating waiver of missed filing deadline because “procrastination plus the universal tendency for things to go wrong (Murphy’s Law)—at the worst possible moment (Finagle’s Corollary)—is not a ‘special circumstance,’ as any junior high teacher can attest”).

⁴ 47 C.F.R. § 54.314(d)(3) (2012 ed.) (“Carriers subject to certifications filed on or before April 1 shall receive support in the third and fourth quarters of that year. Such carriers shall not receive support in the first or second quarters of that year.”). As the *Order* explains, our current rules aren’t much better. *See Order* at para. 17 (noting that SureWest’s penalty would have only been \$500,000 less under current rules); *see also* 47 C.F.R. § 54.314(d)(1)(ii) (“An eligible telecommunications carrier subject to certifications filed on or after October 9 will have its support reduced on a pro-rata daily basis equivalent to the period of non-compliance plus the minimum seven-day reduction.”).

⁵ Specifically, USAC disbursed \$1,574,373 in frozen price-cap support to SureWest in the last quarter of 2012.

⁶ *The Commission’s Forfeiture Policy Statement and Amendment of Section 1.80 of the Rules to Incorporate the Forfeiture Guidelines*, CI Docket No. 95-6, Report and Order, 12 FCC Rcd 17087, 17113 (1997).

⁷ *See, e.g., Easy Telephone Services d/b/a Easy Wireless*, File No.: EB-IHD-13-00010590, NAL/Acct. No.: 201332080033, FRN: 0016344368, Notice of Apparent Liability for Forfeiture, 28 FCC Rcd 14433, 14438, para. 15 (2013).

⁸ Communications Act § 503(b)(2)(B); 47 C.F.R. § 1.80(b)(2) (providing inflation-adjusted figures).

975 times the standard for late filings and almost 150 times the standard for inaccurate USF filings) highlights its absurdity.

For yet another, I do not see why SureWest's rural customers in California's Central Valley should be so heavily penalized for such a minor mistake. Recall that universal service funds come with obligations—here, the obligation to deploy broadband. Withholding this support for the last three years has meant that 6,000 unserved, struggling families have had to wait three years for service. Today's denial just means that they will have to keep waiting. That's not punishing the company. That's punishing consumers.

For all these reasons, I believe we should reexamine our rules and rethink the penalties imposed for improper high-cost certifications. I hope my colleagues will join me in that endeavor.